

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 11 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0285-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ENRIQUE RUIZ OROZCO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083214

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Enrique Ruiz Orozco

Tucson
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Enrique Orozco seeks review of the trial court's order denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Orozco was convicted pursuant to a plea agreement of attempted theft of a means of transportation, committed in August 2008. He also admitted having a 2005 conviction for theft of a means of transportation. The trial court sentenced him to an aggravated six-year prison term. Orozco filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and had found “no good faith basis in fact and/or law for post-conviction relief.” *See* Ariz. R. Crim. P. 32.4(c)(2). Orozco subsequently filed a pro se petition, arguing trial counsel had been ineffective for advising him he would receive a mitigated sentence if he pled guilty, that the court had failed to consider all mitigating factors, that his sentence was improper because he would not receive adequate medical care in prison, and that an aggravated sentence based on his prior convictions violated double jeopardy. The court summarily denied relief.¹

¶3 On review, Orozco again argues his trial counsel was ineffective because counsel told Orozco he would receive a mitigated sentence if he pled guilty. He does not explain, however, how the trial court abused its discretion in rejecting this argument below. We have reviewed the court’s ruling and conclude it correctly denied this claim in a thorough and well-reasoned minute entry. No purpose would be served by restating the court’s analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when court correctly identifies and rules on issues raised “in a fashion that

¹Orozco also filed a second petition for post-conviction relief, asserting both trial and Rule 32 counsel had been ineffective because neither had argued the trial court had erred by failing to consider in mitigation several facts related to Orozco’s drug addiction. The court summarily denied that petition and Orozco apparently has not sought review of that decision.

will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶4 Orozco additionally asserts his drug addiction should have been considered as a mitigating factor and that Arizona’s sentencing scheme is unconstitutional because it does not “make provisions for drug treatment.” To the extent he raised the first argument in his petition for post-conviction relief, it is unsupported by the record. As the trial court correctly noted, Orozco’s trial counsel argued he should receive a mitigated sentence because his crimes were a result of his drug addiction. Because Orozco did not raise his constitutional claim in the trial court, we do not address it. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court . . . which the defendant wishes to present” for review).

¶5 For the reasons stated, although we grant review of Orozco’s petition, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge